IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 16556 of 2006(U)

ELECTION OP.20/2005 of MUNSIFF COURT, OTTAPPALAM

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PETITIONER:

SWAYAMPRABHA, W/O.GANESAN,
RESIDING AT PULICKATHODI,
PANNIYAMKURISSI, CHERPLACHERRY,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SRI.JIBU P THOMAS
SRI.SUNIL J.CHAKKALACKAL

RESPONDENT:

CHANDRAMATHY, W/O.UNNIKRISHNAN,
RESIDING AT VEENATHPARAMBIL, CHERPLACHERRY AMSOM,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.SANTHEEP ANKARATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC NO.16556/06)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE MEMORANDUM OF ELECTION PETITION NO.20/05 DATED 13.10.2005.

EXT.P2: TRUE COPY OF THE ORDER IN I.A.NO.2517/05 DATED 23.12.2005.

EXT.P3: TRUE COPY OF THE ORDER IN ELECTION O.P.NO.20/05 DATED 23.12.05.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.16556 of 2006

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Dated: 21st August, 2007

JUDGMENT

The returned candidate in the election to ward No.15 of Cherplacherry Grama Panchayat who was the respondent in Election O.P.No.20/05 on the files of the Munsiff's Court, Ottapalaml is aggrieved by Ext.P3 order of the learned Munsiff (Election Tribunal). Under Ext.P3, the learned Munsiff has overruled the petitioner's contention that the Election Petition is not maintainable. The question of maintainability was raised by the petitioner on the basis of the proviso to Section 91(1)(c) of the Kerala Panchayat Raj Act. It was contended by the petitioner that all Election Petitions containing allegations of corrupt practice shall be accompanied by an affidavit in the prescribed form in respect of the allegations. The prescribed form, according to the petitioner, is form No.28 and the affidavit is to be sworn before a Magistrate of the First Class or a Notary as per Rule 62 of the Kerala Panchayat Raj (Conduct of Election) Rules, 1995. It is ignoring the above provisions which are mandatory that the learned Munsiff passed Ext.P3 order. In the Writ Petition Ext.P3 is assailed on various grounds and it is prayed that Ext.P3 order be quashed and it be held that the Election Petition is not maintainable.

2. Though the respondent who is the petitioner in the election O.P. was served with notice, she has not chosen to enter appearance before this court. Mr.V.Chitambaresh, learned counsel for the petitioner addressed me on the various grounds raised in the Writ Petition. According to him, there was a clear allegation in the election petition that the Returning Officer for the furtherance of the prospect of the respondent has assisted or connived with the respondent. Lots between the candidates when equal votes were polled was taken unilaterally without notice to the petitioner and without affording an opportunity to verify the lots. Such an allegation came within the definition of corrupt practices enumerated under Section 120(8) of the Kerala Panchayat Raj Act and was clearly outside the proviso therein. The acts of corrupt practice alleged against the Returning Officer is not a mere act in discharging his official capacity so as to fall within the proviso to Section 120(8) of the Kerala Panchayat Raj Act. Mr.Chitambaresh submitted that having found that the Election Petition is not accompanied by an affidavit in the required form, the court below must have held that the election petition is not maintainable on account of the absence of an affidavit. Counsel referred to the judgment of this court in **A.Mohammed v. Nalakath Soopy** (1997(1) KLT 697).

3. I have considered the submissions addressed at the Bar. I have carefully gone through the full text of Ext.P1. As rightly noticed by the learned Tribunal, the respondent in Ext.P1 does not allege any corrupt practice against the petitioner herein who is the returned candidate. The allegation in Ext.P1 is that the Returning Officer committed illegalities and irregularities in the matter of drawing lots resulting in the petitioner being declared elected. The illegalities and irregularities in the matter of counting of votes and lots are levelled not against the petitioner, the returned candidate but against the Returning Officer. Mr.Chitambaresh would highlight the allegation in paragraph 3 of Ext.P1 that with the intention of ensuring the success of the respondent in the election only, the Returning Officer has deliberately violated the mandatory provisions of the Acts and the Rules.

4. It is Section 120 (8) of the Kerala Panchayat Raj Act which deals with corrupt practices. Section 120 (8) says that the following shall be deemed to be corrupt practices for the purpose of the Act. Section 120(8) is quoted below:

> "The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any

assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of a Panchayat or of ;Government and belonging to any of the following classes, namely:-

(a) gazetted officers;

(b) members of the police forces;

(c) excise officers;

(d) revenue officers; and

(e) such other class of persons in the service of the Government as may be prescribed:

provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his election agent or any other person acting with the consent of the candidate or his election agent, (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election."

I do not find any allegations or corrupt practices against the petitioner, the returned candidate. The allegations levelled against the officer in Ext.P1 do not amount to allegation of corrupt practices coming within the meaning of Section 120(8) of the Kerala Panchayat Raj Act.

5. Section 91(1)(c) of the Kerala Panchayat Raj Act reads as follows:

"91. Contents of petition- An election petition-

(a) .....

(b) .....

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof."

Rule 62 of the Kerala Panchayat Raj (Conduct of Election) Rules, 1995 provides that the affidavit referred to under the proviso to Sub-section (1) of Section 91 shall be in form No.28 and the same shall be sworn before a Magistrate of the First Class or a Notary. The

learned Munsiff did find that the affidavit which was filed by the respondent was not in form No.28. Nevertheless the contention regarding the maintainability was overruled on the view that filing of an affidavit was not necessary since no corrupt practices had been alleged. I do not find any infirmity about the learned Munsiff's view which is seen supported by the by the judgment of this court in **Geetha Shetty v. Premalatha** (I.L.R. 2006(2) Kerala 79). The challenge against Ext.P3 fails and the Writ Petition will stand dismissed.

srd **PIUS C.KURIAKOSE, JUDGE**